

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 2780 of 1990

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

MOCHI ZUMCHAND WAGHJI

Versus

STATE OF GUJARAT

Appearance:

MR KB PUJARA for Petitioners
MR SP DAVE APP for Respondent No. 1
MR VIJAY H PATEL for Respondent No. 2

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 28/07/98

ORAL JUDGEMENT

This application has been preferred by the accused persons in Criminal Case No. 43/88 against the order dated 18th December, 1989, made by the learned JMFC, Radhanpur, directing to issue process against the accused-applicants. It appears that one Jabiben-widow of

Amraji Kakkalji, lodged a complaint before the learned Magistrate in respect of the unnatural death of her daughter-Bhagvati. Said Bhagvati was married to the applicant no.4 on 10th December, 1986, and she died in suspicious circumstances on 22nd February, 1988. The complaint in this respect was made by the widowed mother of late Bhagvati on 4th October, 1988. The learned Magistrate ordered an inquiry under section 202 of Code of Criminal Procedure. The learned Magistrate considering the evidence produced by the said Jabiben, including the evidence of the Medical Officer, under the impugned order dated 18th December, 1989, directed to issue process against the accused-applicants for the offence punishable under sections 302, 34, 119, 120-B and 306 of the IPC. Feeling aggrieved, the applicants preferred Criminal Revision Application No. 106/89 before the learned Sessions Judge, Banaskantha, which was dismissed on 28th September, 1990. Feeling aggrieved, the applicants have preferred the present application.

On 6th November, 1990, this court (Coram : Mr. Justice B.C.Patel) directed the notice to issue to the respondents. The application was admitted to final hearing on 12th February, 1990, and was fixed for hearing of the Rule on 26th December, 1990. Thus, it is evident that though this court had admitted this application to final hearing, had not stayed further proceeding in the matter. Rule was fixed for hearing on 26th December, 1990. The application does not appear to have been heard so far. It is not known whether pending this application, investigation and trial has proceeded further or not.

Having perused the papers, I am of the view that there was sufficient material on record for the learned Magistrate to presume that the accused-applicants had committed the alleged offence. The learned Magistrate was, therefore, right in issuing process against the accused-applicants. Besides, in my view, the application in the present form is also not maintainable before this court. There is no warrant for interference with the order of issuing process against the accused-applicants.

Application is, therefore, dismissed. Rule is discharged. Registry is directed to send the writ forthwith.

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JOSHI